

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CLAYTON HARKER,

Defendant.

NO. CR23-007 RAJ

GOVERNMENT'S SENTENCING  
MEMORANDUM

**I. INTRODUCTION**

For Clayton Harker, children are a means to an end—that end being his sexual gratification. On multiple occasions, he has tried to gain access to young girls so he can rape them. Indeed, that he did not brutalize a child on the night of his arrest is only because that little girl did not exist. Make no mistake, had a little girl been in that hotel room instead of undercover federal agents, she would have been yet another casualty in Harker's wake.

Of course, his crimes do not involve only fictitious children. By his own admission, he has used threats and extortion to compel numerous children to send him sexually explicit imagery. And the glee with which he discussed child sexual abuse and the creation of the imagery recording that abuse is nothing short of monstrous.

1       Simply put, Harker has cut a swath of destruction across the lives of vulnerable  
2 minors whose only mistake was to cross paths with a predator. The threat he poses is  
3 real. And neutralizing that threat will require incapacitation through lengthy confinement  
4 followed by close supervision for the remainder of Harker's life.

5       Accordingly, the government recommends that this Court sentence Harker to 30  
6 years in prison followed by lifetime supervision.

## 7                   **II.     FACTUAL AND PROCEDURAL BACKGROUND**

8       As detailed in the criminal complaint, Dkt 1, this investigation began in  
9 November 2022. Federal agents obtained Snapchat content for a user in Virginia and  
10 discovered Harker was among those that Virginia user was messaging. In addition to  
11 trading child sexual abuse imagery, the two messaged extensively about child sexual  
12 abuse and methods for getting minors to create and send sexually explicit imagery.  
13 Harker also offered to pay this user \$1000 to rape his seven-year-old niece.

14       Federal agents then initiated an undercover investigation targeting Harker. An  
15 undercover agent purporting to have an eight-year-old niece started communicating with  
16 Harker over Snapchat. And Harker quickly (and repeatedly) expressed his interest in  
17 meeting and raping that child. He also asked if he could film that abuse.

18       A second undercover agent also began communicating with Harker over Snapchat,  
19 purporting to be this fictitious eight-year-old girl. In the days that followed, Harker  
20 engaged in extensive and graphic sexual conversations with someone he believed to be an  
21 eight-year-old girl, even sending her sexually explicit photos. He also arranged with her  
22 "uncle" to meet both at a Bellingham-area hotel on December 20, 2022.

23       That afternoon, Harker arrived at the hotel carrying with him lubricant, a digital  
24 camera, memory cards, and a ski mask to conceal his identity while filming his rape of  
25 this child. In a post-*Miranda* interview, Harker explained that he intended to vaginally  
26 and orally rape this young girl and use the camera he brought with him to film those acts.  
27

1 He also told agents that he regularly solicited minors to send him sexually explicit  
 2 imagery over the internet and would use threats and extortion when necessary to induce  
 3 these children to send him that imagery. He explained he was sexually interested in  
 4 children and his preferred age range was infant/toddler to early teens. Finally, he said he  
 5 regularly gratified himself while viewing child sexual abuse material or fantasizing about  
 6 abusing children he encountered in his day-to-day life.

7 That same day, agents arrested Harker, and a federal grand jury charged him with  
 8 attempted violations of 18 U.S.C. § 2251(a) (Production of Child Pornography) and 18  
 9 U.S.C. § 2422(b) (Enticement of a Minor). Harker entered into a plea agreement and  
 10 pled to a superseding information charging him with one count of attempted enticement  
 11 of a minor and one count of possession of child pornography in violation of 18 U.S.C.  
 12 § 2252(a)(4)(B).

### 13 **III. GUIDELINES RANGE**

14 The government agrees with U.S. Probation's calculation of the advisory range in  
 15 this case. With a TOL 43 and CHC I, the advisory range is life.

### 16 **IV. SENTENCING RECOMMENDATION**

17 The government believes a sentence of 30 years of imprisonment followed by  
 18 lifetime supervision is an appropriate sentence given the factors in 18 U.S.C. § 3553(a).

19 Clayton Harker delighted in brutalizing innocent children. He went to great  
 20 lengths to realize his dream of violating a young girl. And he blackmailed young girls to  
 21 obtain the material he craved to gratify his sexual appetite. Make no mistake, the harm  
 22 he has caused is real, and the harm he would have caused given the chance is impossible  
 23 to overstate.

24 Sexual violence against a child is as much an attack on that child's psyche as it is a  
 25 physical assault. Bodies often heal in time, but it is the unseen emotional and  
 26 psychological hurt that always remains. Survivors, not the perpetrators, bear the heavy  
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1 psychological load that all survivors of child sexual abuse must carry. And they will do  
2 so for the remainder of their lives.

3 Nor is the harm Harker caused confined to those with whom he had direct contact.  
4 He sought out and gratified himself using imagery depicting the very worst moments of a  
5 child's life. Indeed, he repeatedly asked one likeminded offender for imagery of toddler  
6 rape.

7 Sadly, Harker's crimes are all too common. The scourge of child sexual abuse  
8 that threatens children around the world seems only to worsen as time passes. That this  
9 newest tragedy is just one more in a long series, however, makes it no less devastating for  
10 the survivors. And as a community beset by a seemingly never-ending deluge of such  
11 tragedies, we must stiffen our resolve and resist becoming numb. What Harker did was  
12 outrageous, and outrage is the correct sentiment every time an adult does violence to a  
13 child.

14 Harker doubtless had no control over having a sexual interest in children. What  
15 he could control, however, was the decision to give into that impulse over and over.  
16 Time and again, Harker chose gratification through sexual violence over the well-being  
17 of children.

18 These children and their families, not Harker, will ultimately pay the price for this  
19 selfishness and cruelty. It therefore falls to this Court to speak for the community and  
20 state in no uncertain terms that those who commit acts of sexual abuse against the most  
21 vulnerable among us cannot escape justice.

22 The Sentencing Guidelines are "the starting point and the initial benchmark," *Gall*  
23 *v. United States*, 128 S. Ct. 586, 596 (2007), and are to be kept in mind throughout the  
24 process. *Id.* at 596-97, n. 6. In *United States v. Carty*, 520 F.3d 984 (9th Cir. 2008), the  
25 Ninth Circuit set out the factors, as well as the framework, for how a district court should  
26 approach sentencing. The Court stated that the "overarching statutory charge for a  
27

1 district court is to 'impose a sentence sufficient, but not greater than necessary' to reflect  
 2 the seriousness of the offense, promote respect for the law, and provide just punishment;  
 3 to afford adequate deterrence; to protect the public; and to provide the defendant with  
 4 needed educational or vocational training, medical care, or other correctional treatment.”  
 5 *Id.* at 991, quoting 18 U.S.C. 3553(a) and (a)(2).

6 Critical to the imposition of an appropriate sentence in this case is the fulsome  
 7 consideration of the 18 USC § 3553(a) factors including the seriousness of the offense,  
 8 promoting respect for the law, just punishment, deterrence, the Defendant’s history and  
 9 characteristics and avoiding disparate sentences.

10 **1. Seriousness of the offense, promoting respect for the law, provision of**  
 11 **just punishment and deterrence**

12 Sexual violence of any kind, but particularly against children, attacks our  
 13 collective decency and fuels an increasingly visible public health crisis. *See New York v.*  
 14 *Ferber*, 458 U.S. 747 (1982) (noting more than 40 years ago that the “Government has a  
 15 compelling state interest in protecting children from those who sexually exploit them,  
 16 including both child molesters and child pornographers”).

17 This type of crippling emotional injury will forge a lifelong psychological  
 18 headwind for victims, forever jeopardizing their self-esteem and well-being. With a  
 19 lifetime of psychological insecurity and a weakened trust in others, they will likely  
 20 struggle with isolation, depression, and other mental health issues. In an instant, sexual  
 21 violence robs victims of their childhood, inflicting psychological wounds that will never  
 22 fully heal.

23 The intolerable prevalence of child sexual abuse is a menace that has, by its  
 24 nature, avoided precise measurement. However imprecise, its impact continues to impose  
 25 a grave and consequential societal cost. Internationally and domestically, our community  
 26 faces a deeply disturbing reality of broad-based child sex abuse trauma. The select few  
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1 studies that have attempted to examine the depth of this epidemic suggest a staggering  
2 prevalence of child sex abuse domestically, much less around the world.

3 In a 1986 study of 2,626 American adult men and women, researchers found that  
4 “27% of women and 16% of the men” reported sexual abuse as children. DAVID  
5 FINKELHOR, GERALD HOTALING, I.A. LEWIS & CHRISTINE SMITH, *Sexual Abuse in a*  
6 *National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk*  
7 *Factors* 20-21 (Pergamon Press plc 1990). Of those female survivors, an alarming 72%  
8 reported that their abuse came at the hands of offenders at least 10 years older. *Id.* at 22.

9 Together, those twin statistics reveal that more than 19% of female participants  
10 acknowledged experiencing childhood sexual abuse by an offender at least 10 years their  
11 senior. Worse yet, 57% of these female survivors did not disclose their abuse to anyone  
12 for at least a year, if ever. *Id.*

13 As we begin to reckon with the depth of this epidemic, we also continue to  
14 struggle with understanding the neurological impacts of this insidious brand of trauma.  
15 Although the nature of this trauma does share some similarities with military service-  
16 connected PTSD, the growing data suggest child sex abuse trauma may be far more  
17 debilitating.

18 In 1986, Frank Putnam and Penelope Trickett began a twenty-year study of eighty-  
19 four girls referred by the District of Columbia Department of Social Services who had  
20 suffered sexual abuse at the hands of a family member. BESSEL VAN DER KOLK, *The*  
21 *Body Keeps The Score* 164 (2014) (quoting Martin Teicher, MD, PhD, Scientific  
22 American). The study compared this group to a control group of “eighty-two girls of the  
23 same age, race, socioeconomic status, and family constellation who had not been  
24 abused.” *Id.* The study achieved “unambiguous” results that the group of abused children,  
25 when compared to their unabused peers of the same age, race, and social circumstances,  
26 suffered a range of “profoundly negative effects, including cognitive deficits, depression,  
27

1 dissociative symptoms, troubled sexual development, high rates of obesity, and self-  
2 mutilation.” *Id.*

3 As the study continued, researchers also discovered the abused girls increasingly  
4 “shut down and became numb” while also demonstrating increasingly elevated amounts  
5 of the stress hormone cortisol. *Id.* Sadly, this numbing phenomenon was found to have  
6 fueled a vicious cycle for these survivors wherein family, friends and others were  
7 decreasingly likely to notice indicia of the victim’s abuse despite the victim actually  
8 experiencing considerable contemporaneous trauma. *Id.* Indeed, many of these  
9 participants were far less prepared to “react[] to distress” and take “protective action”  
10 while also unwittingly concealing their trauma through a superficial numbness that  
11 frustrated diagnosis and treatment. *Id.* at 165.

12 To be sure, the most egregious acts Harker contemplated—raping a little girl—  
13 never came to pass. But that was not for want of desire on his part. It is a product of the  
14 work of law enforcement.

15 Section 3553(a)(2)(A) asks this Court to fashion a sentence “to reflect the  
16 seriousness of the offense, to promote respect for the law, and to provide just punishment  
17 for the offense.” The science examining the effects of child sexual abuse trauma  
18 demonstrates the profound long-term consequences that flow from that abuse. Harker’s  
19 victims now face an elevated risk of attempting suicide, using illicit drugs, and having  
20 alcohol problems. In short, by sexually attacking these children, the defendant has  
21 subjected them to significant long-term health consequences.

22 Finally, there is also a compelling need for deterrence—specific and general.  
23 Because of the profound harm caused by child sexual abuse, the message to those who  
24 commit sexual violence must be simple and unequivocal. That is, those who offend  
25 against children must understand in no uncertain terms that the consequences for doing so  
26 will be dire.

27 **2. Characteristics of the defendant and Protection of the Community**



1 The scope and scale of Harker's offense conduct are alarming. It is apparent that  
 2 Harker was either unwilling or unable to exercise even a modicum of control over his  
 3 dark sexual desire. There is every reason to believe that given the opportunity, he will  
 4 offend against a child. And only lengthy confinement followed by close supervision has  
 5 any hope of mitigating that risk.

6 Harker's age presents a separate challenge in this context. On the one hand, he is  
 7 a young man with many years ahead of him. Those years bring with them the promise of  
 8 a productive life. On the other, however, his many years also present an opportunity for  
 9 him to return to his old patterns. His sexual attraction to children is unlikely to go away,  
 10 and there is ample reason to believe that whatever he says now, he will have no greater  
 11 control over that desire going forward than he had before.

### 12 **3. The need to avoid unwarranted sentencing disparities among** 13 **defendants**

14 To be sure, there are cases involving the sexual abuse of children in which judges  
 15 of this district have sentenced the offender to terms of imprisonment substantially below  
 16 the advisory Guidelines range. Still, multi-decade sentences are routine in this district for  
 17 cases involving child sexual abuse as well. *See, e.g., United States v. Thompson*, CR20-  
 18 5250 RJB (30-year sentence for defendant who raped multiple young girls); *United States*  
 19 *v. Descoteaux*, CR16-5246BHS and CR17-5074BHS (276-month sentence for defendant  
 20 who repeatedly raped his stepdaughter over the course of a 4-year period); *United States*  
 21 *v. Morales*, CR16-5493RJB (240-month sentence for defendant who produced CP images  
 22 depicting rape of two-year-old autistic daughter); *United States v. Crawford*, CR16-  
 23 5303RBL (120-month sentence for defendant suffering from Autism/Asperger's  
 24 Syndrome who raped his six-year-old niece); *United States v. Donald McCoy, Jr.*, CR16-  
 25 284JLR (288-month sentence for production, distribution, and possession of child  
 26 pornography for defendant who molested four young girls and filmed the abuse); *United*  
 27 *States v. Thorson*, CR16-277RSM (324-month sentence for defendant who produced CP



1 images of numerous minors while they slept including one image wherein the defendant  
 2 placed his erect penis next to 9-year-old granddaughter's mouth); *United States v. Joseph*  
 3 *Thomas French*, CR15-5014RBL (300-month sentence for defendant who restrained  
 4 victim under 11-years-old, vaginally and anally raped her on at least 15 occasions and  
 5 broadcast these events on the internet); *United States v. Blaine K. Nipp*, CR14-5051RJB  
 6 (276-month sentence for defendant with a lengthy criminal history who produced and  
 7 distributed images depicting his masturbation against the foot of an incapacitated 10-  
 8 year-old non-family member); *United States v. Leroy Williams*, CR14-034RSL (360-  
 9 month sentence for defendant with prior child rape conviction who produced child sexual  
 10 abuse imagery depicting his rape of a young girl); *United States v. David Michael*  
 11 *Navarro*, CR13-5525BHS (276-month sentence for defendant who produced, distributed,  
 12 and possessed materials depicting the sexual exploitation of children); *United States v.*  
 13 *Jonathan Scott Lee*, CR13-5006RBL (300-month sentence for defendant who produced,  
 14 distributed, and possessed materials depicting the sexual exploitation of children); *United*  
 15 *States v. David Engle*, CR12-366JLR (300-month sentence for defendant who produced,  
 16 received, and possessed materials depicting the sexual exploitation of children); *United*  
 17 *States v. Phillip Allen*, CR12-260RAJ (264-month sentence for defendant who produced  
 18 and distributed pictures of child sexual exploitation).

19 \*\*\*

20 The government's 30-year recommendation is a lengthy one to be sure. But it is a  
 21 recommendation borne largely of its extreme concern about the danger Harker poses to  
 22 children. His offense conduct shows very clearly why there is good reason to fear that he  
 23 will offend again given the chance. Thus, the only tools available to protect the  
 24 community are his incapacitation through confinement and close supervision upon  
 25 release.

**V. RESTITUTION**

The government has received one restitution claim from a series victim. That victim, through counsel, has agreed to accept the mandatory minimum of \$3,000. Defense counsel has indicated the defendant will not oppose this request.

**VI. WAIVER OF APPEAL**

As part of the plea agreement, the defendant has waived the right to appeal the sentence imposed in this case if the sentence does not exceed the applicable Guidelines range determined by the Court at the time of sentencing. If the Court imposes a sentence within this applicable Guidelines range or less, the government respectfully requests that the Court notify Defendant, pursuant to Federal Rule of Criminal Procedure 32(j)(1)(B), that Defendant has waived Defendant's appeal rights except as to the effectiveness of legal representation. Otherwise, the government requests that the Court notify Defendant of the right to appeal the sentence as set forth in Title 18, United States Code, Section 3742. est.

DATED this 16th day of February, 2024.

Respectfully submitted,

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s/ Matthew P. Hampton

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